

FCC MAIL SECTION

Federal Communications Commission

DA 00-544

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCH UNIT

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-42
Table of Allotments,)	RM-9826
FM Broadcast Stations.)	
(Charleroi and Duquesne, Pennsylvania))	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 1, 2000;

Released: March 10, 2000

Comment Date: May 3, 2000

Reply Comment Date: May 18, 2000

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making filed by Keymarket Licenses LLC, licensee of Station WOGI-FM (formerly WZKT(FM)), Channel 252A, Charleroi, Pennsylvania, proposing the reallocation of Channel 252A from Charleroi to Duquesne, Pennsylvania, and the modification of Station WOGI-FM's license accordingly.¹ Petitioner states its intention to apply for the channel, if reallocated.

2. The proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Duquesne is located in Allegheny County, and has a 1990 U.S. Census population of 8,525 persons. The city is governed by a mayor and a four-member city council. Duquesne provides police and volunteer fire and sewage services. It has its own public school system, a public park, restaurants, shopping, and its own post office. Duquesne has social and charitable organizations, such as the Moose and the American Croatian Clubs. There are 19 separate churches in Duquesne.

3. Petitioner further states that there are currently no local aural transmission services in Duquesne, and that the reallocation of Channel 252A to Duquesne would provide the community

¹ On February 4, 2000, the station's call sign was changed from WZKT(FM) to WOGI-FM.

with its first local aural service, without depriving Charleroi of its sole local service.² Moreover, petitioner asserts that the proposal would result in a preferential arrangement of allotments consistent with the FM allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).³ The reallocation would provide a 60 dBu service to 1,497,423 persons, nearly four times the population presently served. Since petitioner seeks to relocate its transmitter site, it is required to provide a gain and loss area study. Although the proposed reallocation would provide a 70 dBu signal to 31.2% of the Pittsburgh, Pennsylvania Urbanized Area, a Tuck analysis is not necessary.⁴ However, petitioner is requested to provide information as to the overall public interest benefits that would be derived from the proposed reallocation.

4. We believe that this proposal warrants consideration since it would provide a first local aural transmission service to Duquesne, Pennsylvania, without depriving Charleroi of its sole local service. Channel 252A can be reallocated to Duquesne in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) east at petitioner's requested site.⁵ Since Duquesne is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. As requested, we shall propose to modify Station WOGI-FM's license to specify Duquesne, Pennsylvania, as its new community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 252A at Duquesne, Pennsylvania.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

² Station WASA(AM) would remain licensed to the community.

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

⁴ See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁵ The coordinates for Channel 252A at Duquesne are 40-21-52 North Latitude and 79-48-49 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Charleroi, Pennsylvania	252A	---
Duquesne, Pennsylvania	----	252A

6. IT IS FURTHER ORDERED, That the Secretary Shall Send, by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making, to the following:

Keymarket Licenses, LLC
56 Conifer Circle
Augusta, Georgia 30909

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before May 3, 2000, and reply comments on or before May 18, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Allan G. Moskowitz, Esq.
Kaye, Scholer, Fierman, Hays & Handler, LLP
901 15th Street, N.W., Suite 1100
Washington, D.C. 20005
(Counsel for Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.